
PERCENT FOR ART

**The Percent for Art Act
Rules and Regulations
Standard Contract**

THE PERCENT FOR ART ACT

§451 Purpose

Recognizing the need to enhance culture and the arts and to encourage the development of artists, it is the intent of the Legislature to establish the Percent for Art Program to provide funds for and authorize the acquisition of works of art for certain public buildings and other public facilities.

§452 Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings.

1. Architect. “Architect” means the person or firm retained by the contracting agency to design the project to which the 1% provision of this chapter applies.
2. Artist. “Artist” means a practitioner in the arts, generally recognized as a professional by critics and peers, who produces works of art and who is not the architect or an employee of the architectural firm retained by the contracting agency.
3. Commission. “Commission” means the Maine Arts Commission.
4. Construction. “Construction” means the construction or renovation of a public building or public facility, the cost of which is at least \$100,000, but does not include repairs or minor alterations. In their rulemaking and decisions regarding construction projects governed by this Act, the Commission shall be guided by the determinations of the Director of the Bureau of General Services.
5. Contracting agency.
 - A. “Contracting agency” means the agency of State Government to which funds have been appropriated or allocated by the Legislature for the construction of any public building or other public facility. In the case of school construction projects, the contracting agency shall be the governance body of the school administrative unit.
 - B. “Contracting agency” does not include municipalities and special purpose quasi-municipal districts such as, but not limited to, sewer districts and water districts.
6. Public building or public facility. “Public building” or “public facility” means any building or facility which is to be constructed in part or totally with funds from any source appropriated or allocated by the Legislature, including any school construction project approved for state funding by the State Board of Education, and which is intended for the use of the general public.
 - A. If only part or parts of the building or facility are for the use of the public, “public building” or “public facility” includes only that part or those parts designed for the use of the public. The method of cost allocation to the identifiable part or parts shall be determined by a generally accepted method of cost allocation, provided that the allocated cost for that part or those parts shall exceed \$100,000.

- B. “Public building” or “public facility” does not include highways, sheds, warehouses, or buildings of temporary nature.
- C. A school construction project or any building or facility which is part of the project is subject to this Act only upon the affirmative vote of the school board of the school administrative unit.
- D. School construction project. “School construction project” means a project as defined in Title 20-A, section 15901, subsection 4.

7. Works of art. “Works of art” means any of the following original creations of art.

- A. Sculpture in any material or combination of materials;
- B. Painting;
- C. Graphic arts, printmaking and drawing;
- D. Photography;
- E. Video or electronic media;
- F. Crafts in clay, fiber and textiles, wood, metal, plastics and other materials; and
- G. Mixed or conceptual media, or any combination of forms of media, including collage.

§453 Expenditure for and location of art

1. Amount; gifts and donations. Any contracting agency, except a school administrative unit, shall expend out of any money appropriated or allocated by the Legislature for the construction of any public building or facility, except for correctional facilities, a minimum amount of 1% of the construction portion of the appropriation or allocation, for the purpose of acquiring, transporting and installing works of art. Schools units which have decided to participate in the Percent for Art Program shall expend a minimum amount of 1% of the cost of the eligible school construction project or of any building or facility that is part of an eligible project, or \$50,000, whichever is less.

Donations and gifts to the contracting agency may be used to offset the minimum amount identified in this subsection. The value of art received as a donation or a gift shall be determined by the Commission.

2. Location of works of art. Works of art may be included as an integral part of the structure of the building or facility, may be attached to the structure or may be detached within or outside of the structure.

§454 Contracts for works of art

For purposes of this chapter, expenditures for works of art shall be contracted for separately from all other items in any original construction of any public building or facility. Contracts shall be made according to section 457.

§455 Determination of amount for acquisition of art

The Commission, in consultation with the Bureau of General Services, the Bureau of School Management, the Office of Facilities within the University of Maine System or the Maine Technical College System, whichever has budgetary authority over the project, shall determine the minimum amount to be made available for the purchase of art for each public building or facility.

§456 Duties of the contracting agency

Upon selection of an architect for any project, the contracting agency shall:

1. Notify. Notify the architect of this chapter;
2. Commission. Notify the Commission of the selection of the architect and the details of the project;
3. Consultation. Consult with the Commission about the amount to be expended for works of art; and
4. Selection of artist and works of art. Select the artist and the works of art in accordance with the rules established under section 458, and in consultation with the Commission.

§457 Duties of Commission

The Commission shall:

1. Consult. Consult with the architect and contracting agency about any administrative costs or design services required in connection with the selection of works of art;
2. Procedures for participation of architect. Advise the Bureau of General Services, the Bureau of School Management, the Office of Facilities within the University of Maine system and the Maine Technical College System concerning procedures for participation and compensation of the architect in connection with the acquisition of works of art under this chapter;
3. Contracting agency. Advise the contracting agency;
4. Selection. Approve the process used by the contracting agency in selection of the artist or works of art. If the Commission does not approve the process used to select the artist or works of art, then the contracting agency shall use another selection process in accordance with the procedure authorized in section 456, subsection 4;
5. Acquisition of art. Review the design, execution and placement and acceptance of any works of art that are, or are intended to be, acquired under this chapter; and
6. Standards for maintenance. Adopt standards for the maintenance, conservation, relocation, and transfer of ownership of works of art acquired under this chapter.

§458 Rules and Regulations

The Commission shall establish rules in accordance with the procedures set forth in the Maine Administrative Procedure Act, Title 5, section 8051, et. seq., to carry out the purposes of this chapter. These rules shall include, but not be limited to the following:

1. Selection. Procedures for the selection of artists and works of art;
2. Standards. Standards for the artist and works of art which may be eligible for selection;
 - A. Maintenance. Standards for the maintenance, conservation, relocation, and transfer of ownership of works of art acquired under this chapter;
3. Contract procedures. Procedures for contracting with artists for works of art; and
4. Administrative costs. Administrative costs associated with the acquisition of works of art, which are eligible to be included as part of the amount allocated in section 453, subsection 1.

§459 Administrative costs

Eligible administrative costs incurred by the contracting agency that are associated with the acquisition of works of art shall be included as part of the amount allocated to section 453, subsection 1, for works of art.

Rules to Carry Out the Percent for Art Act

Summary: The following rules to carry out the Percent for Art Act outline the purpose, selection procedures, standards, eligibility of artists, inclusions and exclusions, and contracting procedures.

Section 1. Purpose and Scope

The following rules have been established to assure the expeditious and equitable selection of works of art for public buildings and other facilities, and shall be implemented with the guidance of the Maine Arts Commission, the governing authority.

Section 2. Selection Procedures

A. Advisory Committee

Selection shall be by the contracting agency, which shall consider the recommendations presented by an advisory committee composed of members chosen by the contracting agency and by the Director of the Maine Arts Commission.

1. **Size:** The number serving shall be no less than three and no more than five, except that in the case of projects with Percent for Art budgets of less than \$7,000, the number shall be three.
2. **Composition:** The project architect, a representative chosen by the contracting agency, and a representative chosen by the Director of the Maine Arts Commission all be members of all advisory committees. Additional advisory committee members shall be selected equally by the contracting agency and by the Director of the Maine Arts Commission from any of the following areas in whatever combination best applies to the project; museum director or curator, art historian, critic, collector, artist not in competition, art educator, or lay member of the public, except that in the case of any public school, vocational school, or university construction, a student may be appointed by the contracting agency.
3. **Responsibilities**
 - a. **Contracting Agency Representatives:** Committee members representing the contracting agency shall serve as chair and secretary of the committee. A single committee member may serve in both capacities.
 - i. **Chair:** The committee chair serves as the liaison to the contracting agency, keeps records, administers the budget, publicizes the project, and files final reports.
 - ii. **Secretary:** The committee secretary serves as the liaison among committee members, keeps and distributes minutes of each meeting, and prepares requests for proposals and other correspondence with artists.
 - b. **Maine Arts Commission Representatives:** Committee members appointed by the Director of the Maine Arts Commission shall participate in all committee decisions and shall provide artistic and technical advice.

c. Architect: A representative of the architectural firm shall participate in all committee decisions, and shall provide technical assistance. Engineering and design changes required for installation or display shall be compensated separately. See section 3.B., Inclusions and Exclusions.

d. Maine Arts Commission: The Director of the Maine Arts Commission, or the Director's designee, coordinates the Percent for Art program, maintains the Public Art artist portfolio files, interprets the Percent for Art Act, provides information and technical assistance, and prepares reports and makes presentations to the Commission for approval of the selection process.

4. Remuneration: Committee members not appointed by the contracting agency shall be reimbursed for their necessary travel expenses at current state government rates or contracting agency rates. In the case of necessary off-site travel, committee members appointed by the contracting agency may also be reimbursed for their travel expenses. Reimbursable administrative costs incurred by advisory committee members and by the contracting agency shall include but may not be limited to: honoraria or design fees, postage, duplication, advertising, and telephone costs. The total cost or advisory committee expenses for each project shall not exceed 10% of the amount allocated for the purchase of works of art, except in certain circumstances approved by the Director of the Maine Arts Commission.

5. Commission Approval: The Commission delegates final selection of the artists and artwork to the advisory committee and approves the procedures followed for the project under the rules and regulations.

6. Local Approval: If the contracting agency is a public school or school district which does not delegate final selection of the artists and artwork to the advisory committee, it shall appoint at least one representative from its governing board to sit as a voting member on the advisory committee.

7. Documentation: Each contracting agency shall document the process of selecting works of art and artists. Minutes of each advisory selection committee meeting shall be forwarded to the Maine Arts Commission office by the committee secretary. Final written documentation shall be forwarded to the Commission office within thirty days of the completion and/or installation of any project by the committee chair. Artists shall provide photographic documentation of the artwork installed to the Commission office in the form of six professional quality slides and two 8" x 10" black and white photographs.

8. Conflict of Interest: All committee members shall disclose all potential conflicts of interest and shall disqualify themselves if such conflicts violate state law or established standards for juried competitions.

a. Advisory committee members must not have direct or indirect interest, financial or otherwise, or engage in any business or transaction, or incur any obligation of any nature that conflicts with the selection of artists and artwork for the designated Percent for Art project.

- b. Artists under consideration shall not be affiliated with advisory committee members, the contracting agency, the architectural or design firm involved with the project, or the Commission staff member assigned to the project. Affiliation that constitutes conflict of interest shall include but not be limited to:
 - i. An employee, employer, agent or dealer relationship;
 - ii. A relationship by blood, marriage, business, partnership or collaboration;
 - iii. Any other relationship that may compromise the objectivity of members of the advisory committee.
- c. Artists who are employees of the University of Maine and Maine Technical College Systems shall be ineligible only for Percent for Art projects at the campus where they are employed.

B. Eligibility of Artists

1. Maine Residency: Preference may be given to artists who are Maine residents.
2. Registration: All living artists who wish to be considered for sales or commissions in the Percent for Art program shall register with the Maine Arts Commission. Biographical, visual and other materials, where appropriate, shall be entered into the Public Art file collection, which shall serve as the primary resource for the program. Eligibility to this selective Public Art category shall be based upon qualifications and shall be determined by a jury of peers appointed by the Commission. Artists who have not been selected for inclusion in the Public Art category shall be eligible for sales or commissions only upon the recommendation of the advisory committee. All artists selected for inclusion in the Public Art category shall be eligible for commissions or for sale of existing artwork in the Percent for Art program.

C. Methods of Selection

1. Direct Selection: The advisory committee recommends the purchase of a completed work of art or the commissioning of a specific artist selected from the Public Art files collection.
2. Limited Competition: The advisory committee recommends that a limited number of artists selected from the Public Art files be interviewed or submit proposals on a competitive basis.
3. Open Competition: A competition to which artists must apply directly. A prospectus, appropriate to the specific project, is prepared and its availability is widely publicized. A limited number of applicants are then selected to prepare detailed proposals.
4. Disapproval: If the advisory committee's recommendation is not approved by the local contracting agency, or if the selection process is not approved by the Commission, the process must begin again. Any of the above Methods of Selection may be used in this case.
5. In all projects in which the total art purchase budget is less than \$7,000, the advisory committee shall select artwork either by direct purchase of existing artwork or by a limited competition in which a single commission is awarded.

Section 3. Standards

A. Criteria for Selecting Works of Art

1. **Style and Nature:** Works of any aesthetic persuasion which are appropriate as Art in Public Spaces and compatible in scale, material, form and content with their surroundings will be considered. Works may be participatory in nature.
2. **Quality:** The consideration of highest priority is the inherent quality of the work itself.
3. **Media:** All art forms may be considered.
4. **Elements of Design:** The advisory committee and the artist will take into account the fact that, as differentiated from works in a museum context, Art in Public Spaces may function as focal points, modifiers, or definers of specific spaces, and/or establishes of identity.
5. **Conservation:** Due consideration shall be given to structural and surface soundness and to permanence in terms of relative proof against theft, vandalism, weathering, or excessive maintenance or repair costs.

B. Inclusions and Exclusions

1. **Inclusions:** The portion of the capital appropriation reserved for works of art may be expended for the following:
 - a. **The cost of the work of art:** Generally, if the artist is commissioned to create a new work, the following are taken into account in the contract:
 - i. Artist's professional design fee;
 - ii. Labor or assistants;
 - iii. Materials required for production of work;
 - iv. Studio and operating costs of the artist, including rent, depreciation, utilities, communications, insurance, and other direct and indirect costs;
 - v. Travel of the artist for site visitation and research;
 - vi. Transportation of the work to the site;
 - vii. Installation of the completed work;
 - viii. Photographic documentation required by the Commission;
 - ix. Engineering, codes compliance, and other regulatory costs associated with the creation of the work of art.
 - b. Identification plaques and labels.
 - c. Waterworks and electrical and mechanical devises or equipment which are integral parts of the work of art.
 - d. Frames, mats, or pedestals necessary for the proper presentation of the works of art.

- e. Honoraria and Design Fees: Artists selected as finalists shall be paid honoraria or design fees for written proposals or models at rates to be established by the advisory committee, with a minimum of \$100, and shall be reimbursed for necessary travel expenses at current state government rates.
- f. Other items the Commission approves as appropriate to the particular work of art.

2. Exclusions: The portion of the capital appropriation reserved for works of art may not be expended for the following:

- a. Reproductions by mechanical or other means of original works of art. Included, however, may be limited editions, controlled by the artist, of original prints, cast sculptures, photographs, etc.
- b. Decorative, ornamental or functional elements that are designed by the building architect or consultants engaged by the architect.
- c. Those elements generally considered to be components of a landscape architectural design: plant materials, pools, paths, benches, receptacles, fixtures, planters, etc., unless they function as integral components of an earthwork or environmental public art installation.
- d. "Art objects" which are mass produced or of a standard design, such as playground sculpture or fountains.
- e. Directional or other solely functional elements, such as supergraphics, signage, color coding, maps, etc.
- f. Those items that are required to fulfill the basic purpose of the agency. Examples would be works of art in the collection of a state museum or works of art fulfilling an interpretive or educational role in a state park, the state library, or a college or university art museum or gallery.
- g. Electrical, water, or mechanical service for activation of the work.
- h. Exhibitions and educational programs related to the work.
- i. In connection with the works of art, before or after they are installed: lighting, registration, dedication, unveiling, insurance, security, publicity or publications, and maintenance (preservation, conservation, restoration, repair).

C. Long Term Care

- 1. Insurance: Upon installation, the contracting agency shall insure the work against loss, damage, or theft.
- 2. Maintenance: The contracting agency shall maintain works of art in accordance with a maintenance agreement negotiated with the artist at the time of installation. The contracting agency shall not alter works of art in any way whatsoever without prior approval by the Maine Arts Commission.

3. Conservation: The contracting agency shall make every reasonable effort to consult with the Commission, the artist and a professional conservator in all matters concerning repairs and restoration of works of art. All restoration work shall be done in accordance with the Code of Ethics and Standards of Practice of the American Institute of Conservation, 3545 Williamsburg Lane, NW, Washington, and DC 20008, as amended.

4. Relocation and removal: Works of art shall be placed in the locations for which they are selected. The Maine Arts Commission and the artist shall be notified if, for any reason, a permanently installed work of art must be removed or moved to a new location. The Commission and the artist shall have the right to advise the contracting agency or its designee regarding this treatment of the work.

a. Relocation: If the work was created for a specific site, the new site to which it is to be moved must be consistent with the artist's original intent.

b. Removal: Works of art acquired in the Percent for Art program may be removed only with the approval of the Maine Arts Commission. Requests for permission to remove works of art shall be made in writing and shall be reviewed at the next regular meeting of the Commission.

5. Transfer of Ownership: If a work of art acquired in the Percent for Art program is removed, ownership shall be transferred by sale of the work. Proceeds from the sale of the work shall be used to acquire new works of art in the Percent for Art program. Sale shall be made, in order of priority, to one of the following parties:

a. Artist: To the artist who created the work. The artist shall have the right to purchase the work for its appraised fair market value. In the case of a work of art whose removal could require destruction of the work, the artist shall have the right to acquire the work or its surviving components for that portion of the cost of removal that exceeds the cost of destruction of the work.

b. Nonprofit Organization: If the artist does not choose to purchase the work of art, a nonprofit organization whose mission includes the presentation of works of art may acquire the work under the same conditions as those that apply to the artist.

c. State of Maine: If neither the artist nor a qualified nonprofit organization wishes to purchase the work of art, the State of Maine may acquire the work under the same conditions as those that apply to the artists, except that the State of Maine shall pay only that portion of the appraised fair market value equal to the portion of the original purchase price paid by the original acquiring institution.

d. Other: In the event that none of the above parties wish to acquire the work of art, then the work may be offered to the public under the same conditions as those that apply to the artist.

Section 4. Contracting Procedures

A. Artists; Contracts: All artists' contracts shall follow the form and substance of the model Percent for Art contract provided by the Maine Arts Commission.

B. Public School construction: A school construction project is subject to this act only upon the affirmative vote of the governing board of the school administrative unit prior to the granting of concept approval by the State Board of Education. After the granting of concept approval to a school construction project to include Percent for Art funds, exclusion of Percent for Art will be allowed only under extenuating circumstances and with the approval of the Commissioner of the Department of Education who shall consider the recommendation of the Director of the Maine Arts Commission.

C. Other Actions: All requests by the contracting agency for actions to be considered by the Commission shall be made in writing.

Basis Statement: These rules are to aid in the implementation of the Percent for Art Act, which was created by the Legislature in order to encourage the art in Maine.

AUTHORITY: 27 MRSA Section 458

EFFECTIVE DATE:

PERCENT FOR ART CONTRACT

AGREEMENT made _____ (date) by and between _____
_____ (name and address), county of _____
_____ and State of Maine, (hereinafter called the "Contracting Agency"), and _____
_____ (name, address and telephone)
(hereinafter called the "Artist").

WHEREAS, the contracting agency, through an advisory selection committee, solicited proposals for artwork for the Public Art project at _____ (site) (hereinafter called the "Project"); and

WHEREAS, the contracting agency approved said proposal for funding and the Maine Arts Commission (hereinafter called the "Commission") ratified said proposal and process of the advisory selection committee under the Percent for Art Act (27 MRSA §451, et. seq.);

NOW, THEREFORE, the parties do hereby agree as follows:

1. Delegation of Authority: The contracting agency hereby delegates authority under this agreement to _____ (contracting agency's representative and telephone number) to be its representative in all matters regarding the administration of the agreement. The artist agrees to work with, and to cooperate fully with said representative of the contracting agency.

2. Description of Artwork: The artist will create and install the following work of art:

Title:

Dimensions:

Medium:

Description of the Work:

The above work of the artist is hereinafter referred to as the "work."

3. Standards of Performance: The artist has familiarized him/herself with the site and the local conditions under which the work is to be installed, and had correlated his/her observations with the contracting agency.

4. Changes in Design: The artist shall create the work in accordance with the approved design. Recognizing that the shift in scale from model to full scale requires artistic adjustments, the artist reserves the right to make minor changes in the final work as is deemed aesthetically or structurally necessary.

5. Permanent Location: The permanent location of the work shall be: _____

6. Price and Payment Schedule: The contracting agency will pay the artist a total sum of _____ dollars (\$ _____). Payment shall be made in the following sequence:

\$ _____ upon signing of this agreement by the artist and the contracting agency's representative;

\$ _____ upon approval of installation methods by the Bureau of General Services;

\$ _____ upon completion of half (1/2) the required construction or creation of the work, as defined in this section;

\$ _____ upon installation of the work in its permanent location;

\$ _____ upon completion and final acceptance of the installed work by the contracting agency and the receipt from the artist of maintenance instructions and photographic documentation as referred to in this agreement. To receive payments subsequent to the initial payment, the artist shall submit a billing or invoice to the contracting agency when each of the stages outlined above have been reached. Failure of the contracting agency to notify the artist within 14 days of filing of the nonacceptance of the artist's estimation of degree of completion forecloses future objection, and payment is authorized.

The contracting agency shall have the right of entry to the premises where the work is being done and/or where materials for the work are stored for purposes of inspecting the work and materials; and for recovering the work or materials in the case of default by the artist under this contract.

7. Final Acceptance: Final acceptance will be reached when the contracting agency signifies that the work has been completed and installed according to terms of this agreement. Official sole ownership of the work occurs when a letter of final acceptance is sent by the contracting agency to the artist. This letter will initiate the final payment process, and final payment will be made within thirty (30) days of the date of acceptance. Copies of the letter of acceptance shall be forwarded to the Commission and to the Bureau of General Services. Failure of the contracting agency to notify the artist within 14 days of nonacceptance of the work forecloses future objections, and payment shall be authorized.

8. Assignment of Work: The work and services of the artist are personal and shall not be assigned, sublet or transferred. This shall not prohibit the artist from employing qualified personnel who shall work under his/her supervision.

9. Artist as Independent Contractor: The artist agrees to perform all work under this agreement as an independent contractor and not as an agent or employee of the State of Maine. The artist as independent contractor shall furnish all supervision, labor, materials, equipment, supplies, other incidentals, as well as storage, transportation, shipping, and installation of the work.

10. Inspection and Review: The contracting agency shall have the right at reasonable times and with advance notice to review the work while in the process of execution and to request and receive progress reports.

11. Installation Time Schedule: The artist will begin work upon receipt of the first check due, and shall complete the work and installation thereof by the date of _____, unless that date is extended by the contracting agency, in which case it shall become the responsibility of the artist to store the work before its installation.

In the event that the work and the installation are not completed by the above date, the artist shall incur a penalty of 1% of the remaining balance which would be due the artist upon completion and installation under this agreement for each day after the above date until completion of the work and installation.

The artist may request an extension of time from the contracting agency within five (5) days of the originally agreed upon installation date. If an extension is granted, a new installation date shall be agreed upon in writing, and the above penalty shall not apply unless the new date is not met. If an extension of time is granted it shall be documented in writing.

12. Documentation and Records: Within thirty (30) days of installation of the work, the artist shall furnish the Commission with a minimum of six (6) professional quality 35mm slides and two (2) 8"x10" black and white glossy photographs of the work, and shall provide a full written narrative description of the work.

13. Public Notice: The contracting agency agrees to provide and install an identification plaque for the work within thirty (30) days of the final acceptance date. The written contents of the plaque shall include at least the following information:

Title of Artwork _____
Year _____
Artist _____
Commissioned for _____
and the citizens of Maine under the Maine Percent for Art Act.
Administered by the Maine Arts Commission.

The plaque shall be of such medium and design as to be appropriate to the work itself and the permanent location of the work, and the artist shall be consulted as to design. In the case of a series of works, the artist and the contracting agency will reach agreement in writing concerning the number of plaques needed for appropriate identification.

14. Warranty: The artist warrants that the design of work being commissioned is the original product of his/her own creative efforts. The artist warrants that the work is an edition of one (1), except, for example, in the case of the purchase of signed, limited edition prints. The artist agrees to deliver the work to the contracting agency free and clear of any liens or claims arising from any source whatsoever.

15. Indemnity and Liability: The artist shall, at his own cost and expense, defend and indemnify, and hold harmless the contracting agency, their officers, agents and employees, from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of, or resulting from, the performance of this agreement, provided that such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property, including the loss of use therefrom, and (2) is caused in whole or in part by any negligence, act, or omission of the artist, anyone directly or indirectly employed by him, or anyone for whose act he may be liable, except to the extent that it is caused in part by the contracting agency, their officers, agents, or employees. The artist further agrees to defend, indemnify, and hold harmless the contracting agency, their officers, agents, or employees from and against any claims or liens of his subcontractors, and his and their laborers, materialmen, mechanics, and suppliers.

Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the artist that would otherwise exist. The extent of the indemnification provision shall not be limited by any provision for insurance contained in this agreement. Before final payment is approved, the artist shall supply a completed certification of payment of debts and claims and a lien release.

16. Insurance: Prior to the execution of this agreement, the artist shall provide the contracting agency with a certificate evidencing automobile liability insurance in an amount not less than \$300,000 combined single limit for each occurrence. Said certificate shall name any subcontractors employed by the artist and shall guarantee the contracting agency thirty (30) days written notice prior to cancellation. The Commission shall carry comprehensive general liability insurance. The artist shall notify the Commission of installation times and dates at least 14 days prior to installation, and shall notify the Commission immediately upon completion of installation.

17. Compliance with Laws: In the performance of the work, the artist shall comply with all applicable federal, state, and local laws, rules and regulations.

18. Copyright: The artist expressly reserves every right available to him/her in common law or under the Federal Copyright Act to control the making and dissemination of copies or reproductions of the work, except as those rights are limited by this agreement. The artist shall not unreasonably refuse the contracting agency and/or Commission permission to reproduce the work graphically for purposes strictly for the sole use and benefit of the public. All reproductions of the work shall contain a credit to the artist and a copyright notice substantially in the following form: "Copyright, artist's name, year of publication," in such a manner and location as shall comply with the US Copyright laws. The artist agrees to give a credit substantially in the following form: "Originally owned by _____" in any public showing of reproductions of the work.

19. Non-Destruction/Alteration: The contracting agency agrees that it will not intentionally destroy or alter the work in any way whatsoever without prior consultation with the Commission and the artist.

20. Maintenance: As a condition of, and prior to, final acceptance of the work, the artist shall supply the contracting agency with written maintenance instructions. During his/her lifetime, the artist will supply, at no charge, advise as to problems arising in relation to maintenance of the work. The artist shall incur at no cost to him/her as a result of giving this advice.

21. Repairs: The contracting agency shall make every reasonable effort to consult with the artist and a professional conservator in all matters concerning repairs and restoration of the work. All restoration work shall be done in accordance with the Code of Ethics and Standards of Practice of the American Institute of Conservation (AIC), 3545 Williamsburg Lane, NW, Washington, DC 20008.

22. Relocation: The work will be placed in the location for which it was selected. The contracting agency agrees that the artist and the Commission will be notified if, for any reason, the work has to be removed or moved to a new location. The artist and the Commission have the right to advise or consult with the contracting agency or its designee regarding this treatment of the work.

23. Ownership of Documents and Models: Drawings, specifications, and models of the work, or which relate to the work, including all preliminary studies, shall be the property of the artist following completion of the work under this agreement or following termination of the agreement by the contracting agency without fault on the part of the artist. Under these circumstances, they shall not be used by the artist on other projects or extensions of this project except pursuant to a subsequent agreement in writing between the artist and the contracting agency.

24. Notice: The artist agrees to notify the contracting agency of changes in his address within ninety (90) days of that change and failure to do so shall be deemed a waiver of artist's rights listed in this agreement.

All communications and notices required or permitted under this agreement shall be in writing and shall be deemed sufficiently served if hand delivered or sent by certified First Class Mail to the Commission.

25. Termination: This agreement may be terminated by the contracting agency upon written notice to the artist in the event of failure by the artist to perform in accordance with the terms of this agreement.

Nothing herein shall abrogate any claims which the contracting agency may have against the artist for failure to perform in accordance with this agreement, including any claim for reimbursement of funds advanced to the artist under section 6 above.

26. Non-Waiver: Except as expressly provided in this agreement, no failure or waiver or successive failures or waivers on the part of either party hereto, their successors or permitted assigns, in the enforcement of any condition, covenant or article of this agreement shall operate as a discharge of any condition, covenant or article, nor render the same invalid, not impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

27. Modification of this Agreement: This agreement may be amended or modified only if in writing and signed by the parties, and represents the entire agreement of the parties.

Witness:

Contracting Agency:

By: _____
(signature and title)

Artist: _____

Social Security # _____

BGS _____